IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS

In re Application of:

Minerva M. Yeung et al.

Application No.: 10/774,178

Filed: February 6, 2004

For: METHODS FOR REDUCING ENERGY CONSUMPTION OF BUFFERED APPLICATION USING SIMULTANEOUS MULTI-THREADING PROCESSOR

Examiner: Arcos, Caroline H.

Art Unit: 2195

Confirmation No.: 7185

Assistant Commissioner For Patents
Board of Patent Appeals and Interferences
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF
TO EXAMINER'S ANSWER

Pursuant to 37 C.F.R. § and MPEP § 1208, and in response to the Examiner's Answer dated January 4, 2011, Applicants (hereinafter "Appellants") submit the attached Reply Brief.

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I. STATUS OF CLAIMS

Claims 1-4, 7, 10-15, 19 and 39-40 are pending in the above-referenced application.

Claims 1-4, 7, 10-15, 19, 39, 40, 44 and 44-49 were finally rejected in the Final Office Action mailed April 27 2010, which rejection was sustained in an Advisory Action mailed July 20, 2010.

Appellants cancelled claims 44 and 46-49 in a Supplemental Amendment filed concurrently with an Appeal Brief on October 29, 2010. These claim amendments were entered in an Advisory Action mailed January 14, 2011. Thus claims 1-4, 7, 10-15, 19 and 39-40 are the subject of Appeal.

An Examiner's Answer was mailed January 4, 2011.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0115428 of Zaccarin et al. (hereinafter "Zaccarin") in view of U.S. Patent Application Publication No. 2001/0056456 of Cota-Robles (hereinafter "Cota-Robles") as applied to claim 1 above, and further in view of U.S. Patent No. 4,811,208 of Myers et al. (hereinafter "Myers").

Claim 10 rejected under 35 U.S.C. § 103(a) as being unpatentable over Zaccarin in view of Cota-Robles and Myers, as applied to claim 7 above, and further in view of U.S. Patent Application Publication No. 2002/0188884 of Jain et al. (hereinafter "Jain").

Claims 1, 11-14, 19 and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Zaccarin in view of Cota-Robles.

Claims 2-4, 15 and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Zaccarin in view of Cota-Robles, and further in view of U.S. Patent No. 6,662,203 of Kling et al. (hereinafter "Kling").

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Zaccarin in view of Cota-Robles as applied to claim 1 above, and further in view of Meyers.

Claims 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Zaccarin in view of Cota-Robles and Meyers, as applied to claim 7 above, and further in view of Jain.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claims 12-13 and 19 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regards as the invention.

III. ARGUMENT

Appellants contend that the substance of the Examiner's Answer has already been addressed in the previously filed Appeal Brief, and as such, Appellants reiterate those previous arguments in response to the Examiner's Answer; however, an issue of claim limitation interpretation has been raised by the Examiner for the first time, and thus Appellants will address this issue below.

Section (10), page 17 of the Examiner's Answer sets forth the following point of contention: "Examiner interprets buffer size as buffer level in light of . . . par. [0032] of the specification." Paragraph [0032] of the Specification recites:

> [0032] Depending on the **current buffer level** and how the buffer is used (e.g., input or output buffer), the rate of how fast data is placed into the buffer or read from the buffer may be increased or decreased. This may require the resource manager 210 to increase or decrease the available resources in the system 200. For example, when a current buffer **level of an input buffer indicates a potential buffer overflow condition**, the resource manager 210 may **increase the size of the input buffer.** As another example, the resource manager 210 may increase the frequency/voltage applied to a processor in the system 200.

The Examiner's interpretation that the words "level" and "size" are equivalent has no merit. Appellants point out that the Specification clearly uses both words separately and to mean different things. If Appellants meant for "level" and "size" to mean the same thing, then simply "level" would appear in the above paragraph and no mention of "size" would be present (or vice versa).

Furthermore, the above paragraph of the Specification reads that if a "level" of a buffer indicates an overflow condition (e.g., data size was too large to store in said buffer), the physical "size" of said buffer may be increased (i.e., so said data, which was too large to store previously, may be stored in the enlarged buffer).

Under the Examiner's reasoning, paragraph [0032] should be read to mean that if a "level" indicates overflow, the "level" should be changed. This interpretation would offer no solution to the above described example problem of attempting to store data too large for said buffer; under the Examiner's reasoning, the level would be moved to remove the overflow warning, but no functional hardware changes would be made to solve the problem.

Appellants contend that the Examiner is attempting to interpret paragraph [0032] in this manner because, as Appellants have argued in the previously filed Appeal Brief, the prior art cited by the Examiner **fails to anticipate adjusting a buffer size.** As Appellants have pointed out in the previously filed Appeal Brief, the independent claims recite **adjusting a buffer size**. Appellants contend that the Federal Circuit has held that words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. See *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) and *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, (Fed. Cir. 2004) as cited in MPEP § 2111.01 — ordinary, simple English words whose meaning **is clear and unquestionable**, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say. The Specification does not change the plain meaning of the word "size" for at least the reasons described above.

In conclusion, Appellants respectfully submit that all appealed claims in this application are patentable and requests that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims.

A single copy of this correct brief is submitted as per 37 C.F.R. §41.37(a). Please charge any shortages and credit any overcharges to our Deposit Account number 02-2666.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

Date: March 4, 2011

/Eric S. Hiponia/
Eric S. Hiponia
Reg. No. 62,002
Attorney for Appellants

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(503) 439-8778

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

Date: March 4, 2011 /Katherine R. Campbell/
Katherine Campbell